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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,631	10/23/2003	Kazunori Yoshino	8350.3130	9159

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Finnegan, Henderson, Farabow,  
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1300 I Street, N.W.  
Washington, DC 20005-3315

EXAMINER
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LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/690,631	<b>Applicant(s)</b> YOSHINO, KAZUNORI	
	<b>Examiner</b> F. Daniel Lopez	<b>Art Unit</b> 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 10-13, 17-20 and 24 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 9, 14-16 and 21-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/04; 12/20/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent.

For the art rejections below, the term "motor" is understood to be a broad term including both cylinder type motors and rotary type motors.

Claims 1-5, 11 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Holt et al (see discussion below).

Claims 1, 2, 4, 7, 10-12 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bridwell et al. Bridwell et al discloses first (cylinder type, e.g. 36) and second (18) hydraulic motors connected to tank (46) by respective first and second return lines, and connected to a pressure source (e.g. 44); wherein a pressure control device (e.g. 108) is disposed in the second return line to selectively adjust a magnitude of pressure in the second return line.

Claims 1-3, 5, 11 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Stephenson et al. Stephenson et al discloses first and second hydraulic motors (cylinder type: 110, 114) connected to tank by respective first and second return lines; wherein a pressure control device (e.g. 144) is disposed in the second return line to selectively adjust a magnitude of pressure in the second return line.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 12-13 and 17-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Holt et al in view of Applicant's admitted prior art. Holt et al discloses a work machine and method of operating comprising movable members moved by first (e.g. 14, 86) and second (e.g. 68, 70) motors connected to tank (64) by respective first and second (e.g. 74) return lines, and connected to a pressure source (e.g. 42); wherein a pressure control device (e.g. 82, 84, fig 3) is disposed in the second return line to selectively adjust a magnitude of pressure in the second return line; that one of the first motors (14) controls a boom, and has a pressure control device (60) disposed in the second return line to selectively adjust a magnitude of pressure in the second return line and adjusted in response to changes in operation of the boom, to store the boom's kinetic energy, in the form of momentum (e.g. column 5 line 1-25); but does not disclose that the second motor controls motion of a swing assembly, wherein the pressure control device is adjusted in response to changes in operation of the swing assembly; or that the work machine includes first and second tracks, driven respectively, by second and third hydraulic motors.

Official notice is taken for work machines having hydraulic motors which move movable members, that a hydraulic motor can be used to move a swing assembly, and that the swing assembly, when moved, has a certain amount of kinetic energy in the form of momentum, which is available for storage. Since a swing assembly has a certain amount of kinetic energy in the form of momentum, which is available for storage, and since it is well known to use a hydraulic motor to move a swing assembly in work machines; it would have been obvious at the time the invention was made to one having ordinary skill in the art to use one of the second hydraulic motors of Holt et al to move a swing assembly, as a matter of engineering expediency.

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Since the pressure control device of one of the first motors is adjusted in response to changes in operation of the assembly it operates; it would have been obvious at the time the invention was made to one having ordinary skill in the art to adjust the pressure control device of the swing assembly of Holt et al in response to changes in operation of the swing assembly, for the purpose of being able to store the kinetic energy.

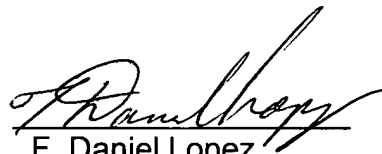
Official notice is taken for work machines having hydraulic motors which move movable members, that the work machine can include first and second tracks, driven respectively, by second and third hydraulic motors. it would have been obvious at the time the invention was made to one having ordinary skill in the art to include in the work machine of Holt et al first and second tracks, driven respectively, by second and third hydraulic motors, as a matter of engineering expediency.

### ***Conclusion***

Claims 6, 8, 9, 14-16 and 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is (703) 872-9306. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

  
F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
January 5, 2005